

PATENTS
101095-0030

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re The Application of:)
Gary T. Ketchum)
Serial No.: 09/788,274)
Filed: February 16, 2001)
For: Leak Point Wetness Sensor for)
Urological Investigation)
)
)
)
)

Examiner: Brown, Michael A.

Art Unit: 3764

Cesari and McKenna, LLP
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July 15, 2005

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

PETITION TO REOPEN PROSECUTION PURSUANT TO
37 C.F.R. §1.198 AND 37 C.F.R. §1.181

The Applicant respectfully petitions the Director under 37 C.F.R. §1.198 and §1.181 to reopen prosecution for the above-referenced patent application, which was abandoned after the Board of Patent Appeals and Interferences (BPAI) decision *Ex parte* Gary T. Ketchum (Appeal No. 2005-0015) affirmed the rejections of all pending claims and the period for seeking court review of the decision expired. This petition is being filed concurrently with a Request for Continued Examination (RCE) and a preliminary amendment setting forth a set of amended claims.

More particularly, the Applicant has amended the claims to incorporate subject matter that the BPAI decision expressly identified as distinguishing the present invention from the cited art. Because these amended claims have not been adjudicated within the PTO and they contain subject matter that the BPAI identified as being distinguishable over the art of record, the Applicant respectfully submits that there is sufficient cause to reopen prosecution in accordance with 37 C.F.R. §1.198.

By way of background, the Assignee of the present invention, SRS Medical Systems, Inc. of Billerica, Massachusetts, recently acquired ownership rights to the above-referenced patent application after purchasing substantially all of the assets of Andco Tek, Inc. of Ventura, California. At the time of the sale, the Assignee was unaware of the status of this application. Prompted by an inquiry from a licensee of the technology, the Assignee learned, after investigation, that the application had gone abandoned. In the course of the investigation, the Assignee's representatives ordered a copy of the application's prosecution history, which included a copy of the BPAI decision *Ex parte* Gary T. Ketchum and a Notice of Abandonment dated April 6, 2005 indicating that the application had been abandoned because the rejections of the pending claims 1-4 were affirmed by the BPAI and the time period for seeking court review of the decision had expired.

In the decision, the BPAI identified the following differences regarding the Applicant's independent claims 1 and 4 and the cited prior art, U.S. Patent No. 5,862,804 to Ketchum:

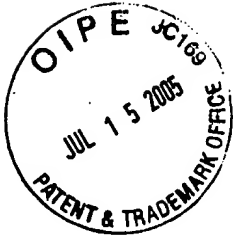
“We appreciate that appellant’s disclosed invention [in claim 1] differs from that of the Ketchum patent in that it utilizes only one temperature sensor and substitutes circuitry which is independent of ambient temperature.” *See* BPAI decision at page 4.

“While the Ketchum patent does not disclose the use of a rate of change detector, claim 4 before us on appeal does not require a rate of change detector... Ketchum is not concerned with and does not measure the rate of temperature change.” *See* BPAI decision at pages 5-6.

The Applicant has amended the pending claims to incorporate the above-noted differences identified by the BPAI. For instance, Applicant’s independent claim 1, as amended, now recites *said circuit generating said reference output independent of ambient temperature*, in accordance with the differences identified by the BPAI. Similarly, Applicant’s independent claim 4 has been amended to recite *a circuit adapted to detect a rate of change in the signal output from said temperature sensitive detector sensor, said detected rate of change corresponding to a rate of change in temperature at said detector sensor*.

The Applicant respectfully submits that the above-noted claim recitations have not been adjudicated within the PTO and contain subject matter that was identified by the BPAI as differentiating the present invention from the cited art. Accordingly, the Applicant respectfully requests that the PTO reopen prosecution for the present application and consider the amended claims consistent with the BPAI’s decision in *Ex parte* Gary T. Ketchum.

A check for \$ 130 is enclosed to cover the Petition Fee pursuant to 37 C.F.R. §1.17(h).



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No. 03-1237.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Stephen E. Kabakoff", written over a horizontal line.

Stephen E. Kabakoff
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